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02ZFM004**REMARKS****Claim Rejections - 35 U.S.C. §112**

The Examiner rejected claims 6 and 16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. It appears that the Examiner mistakenly rejected claim 13 on this basis. However, the text of the rejection appears to indicate that claim 16, not claim 13, is rejected on this basis. Applicant has amended claims 6 and 16 to address the concerns of the Examiner. Therefore, this rejection has been overcome.

Claim Rejections - 35 U.S.C. §102

The Examiner rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by *Takahashi* (USPN 6,032,096). Applicant has cancelled claim 12. Applicant disagrees with the basis for ~~this~~ ^{the} rejection and believes its ~~current~~ ^{of the remaining claims} ~~claims~~ ^{these claims}, including its recently amended claims, distinguish over the cited art. Accordingly, claims 1, 3-11 and 13-20, stand in condition for allowance.

Claim 1 has been amended to include the limitations of claim 2, which Applicant has cancelled. Accordingly, claim 1 now requires, "the first shift mode permits shifting from the first gear ratio to the second gear ratio at our first predetermined speed and the second shift mode permits shifting from the first gear ratio to the second gear ratio at a second predetermined speed that is less than the first predetermined speed." The Examiner contends that this feature shown by Figure 7A and 7B of *Takahashi*. However, these figures fail to disclose this feature. Figure 7A shows a relationship between, "opening angle of accelerator" and "torque or open angle throttle valve." Based on the

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specification, this figure merely describes the feature of altering the speed of the throttle valve based on input from the accelerator. [*Takahashi*, column 3, ll. 9-12, column 3, l. 62 - column 4, l. 14.] These figures do not disclose shifting between a first gear ratio and a second gear ratio at different speeds based on a selected shift mode. Therefore, claim 1 and its dependants, claims 3-11, stand in condition for allowance.

Moreover, claim 3 requires a first shift mode, a second shift mode, a third shift mode and a fourth shift mode. The third shift mode transitions a transmission from the first gear ratio to the second gear ratio at a third predetermined speed and the fourth shift mode transitions the transmission from the first gear ratio to the second gear ratio at a fourth predetermined speed. The third predetermined speed is less than the second predetermined speed and the fourth predetermined is less than the third predetermined speed. These differing speeds at which the transmission is shifted is also not disclosed by *Takahashi*. Therefore, claim 3 is separately allowable.

Claim 4 requires, "the first shift mode permits the reaching of a predetermined engine torque faster than the second shift mode." The Examiner does not explain how this feature is shown by the cited reference. Applicant does not believe the figures show this feature. For this reason, claim 4 is in condition for allowance.

Claim 5 requires, "the first shift mode results in faster engine braking than the second shift mode." Again, this feature is not shown by the cited reference. Therefore, claim 5 is in condition for allowance.

Claim 6 has been amended to read, "a transmission actuator acts faster in the first shift mode to select between the first gear ratio and the second gear ratio than in the

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second shift mode.” This feature is not shown by the cited reference. Therefore, claim 6 is in condition for allowance.

Claim 7 requires, “the first shift mode offers a wider range of engine speeds in which the transmission will shift between the first gear ratio and the second gear ratio than the second shift mode.” This feature is not shown to be disclosed in the cited reference. Therefore, claim 7 is in condition for allowance.

Claim 8 requires, “the first shift mode offers a different clutch configuration for a clutch associated with the transmission than the second shift mode.” This feature is not shown by the cited reference. Therefore, claim 8 is in condition for allowance.

Claim 9 requires, “wherein the first shift mode offers a different engine configuration for an engine associated with the transmission than the second shift mode.” This feature is not shown by the cited reference. Therefore, claim 9 is in condition for allowance.

Claim 11 requires, “assigning a ranking value to each vehicle condition and assessing the ranking value to identify the appropriate shift mode.” This feature is not shown by the cited reference. Therefore, claim 11 is in condition for allowance.

Independent claim 13 requires in pertinent part, “electronically sensing a plurality of vehicle conditions,” “electronically evaluating the sensed plurality of vehicle conditions by signing a ranking value to each of the sensed plurality of vehicle conditions and assessing the ranking value,” and “electronically selecting from among at least the first shift mode and the second shift mode based on the evaluated vehicle condition.” These steps are not shown by the cited reference. There is no ranking of vehicle conditions nor their assessment based on this ranking. Furthermore, there is no selection

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between shift modes based on this evaluation. *Takahashi* does not show these features. Therefore, claim 13 and its dependents, claims 14-19, stand in condition for allowance.

Claim 14 requires, "the first shift mode permits the reaching of a predetermined engine torque faster than the second shift mode." Again, this feature is not shown by the cited reference. Therefore, claim 14 is in condition for allowance.

Claim 15 requires, "the first shift mode results in faster engine braking than the second shift mode." Again, there is no mention within *Takahashi* of this feature. Therefore, claim 15 is in condition for allowance.

Claim 16 requires, "wherein a transmission actuator acts faster in the first shift mode to select between the first gear ratio and the second gear ratio than in the second shift mode." This feature is not shown by the cited reference. Therefore, claim 16 is in condition for allowance.

Claim 17 requires, "the first shift mode offers a wider range of engine speeds in which the transmission will shift between the first gear ratio and the second gear ratio than the second shift mode." This feature is not shown by the cited reference. The Examiner does not explain how the cited reference shows this feature. Therefore, claim 17 is in condition for allowance.

Claim 18 requires, "wherein the first shift mode offers a different clutch configuration for a clutch associated with the transmission than the second shift mode." This feature is not shown by the cited reference. Therefore, claim 18 is in condition for allowance.

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Claim 19 requires, "the first shift mode offers a different configuration for an engine associated with the transmission than the second shift mode." This feature is not shown by *Takahashi*. Therefore, claim 19 is in condition for allowance.

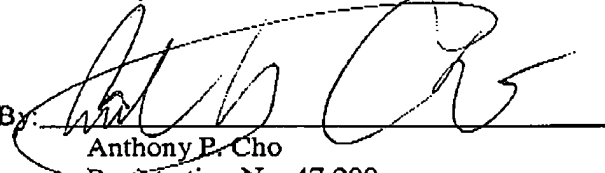
Independent claim 20 requires in pertinent part, "wherein said control unit selects from a plurality of shift modes including at least a first shift mode and a second shift mode based on data received from said vehicle condition sensor with said first shift mode shifting from a first gear ratio to a second gear ratio at a first predetermined speed and with said second shift mode shifting from said first gear ratio to said second gear ratio at a second predetermined speed that is less than said first predetermined speed." Again, this feature is not shown by the cited reference. Accordingly, claim 20 is in condition for allowance.

For the foregoing reasons, claims 1, 3-11 and 13-20 stand in condition for allowance.

Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS

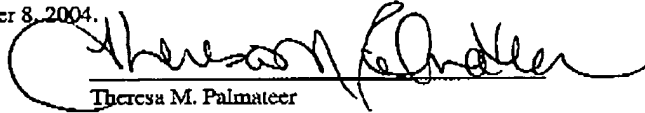
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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 872-9306) on September 8, 2004.


Theresa M. Palmateer

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